authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

* * * * *

SEC. 4. That no officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

* * * * *

SEC. 8. Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

2. The Suits in Admiralty Act of 1920, 41 Stat. 525 (46 U. S. C. 741–752), provides in pertinent part as follows:

CHAP. 95.—An Act Authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attach-

ment in foreign jurisdictions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided,* That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States at-

torney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

SEC. 3. That such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. Decrees shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction. If the libelant so elects in his libel the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. Neither

the United States nor such corporation shall be required to give any bond or admiralty stipulation on any proceeding brought hereunder. Any such bond or stipulation heretofore given in admiralty causes by the United States, the United States Shipping Board, or the United States Shipping Board Emergency Fleet Corporation, shall become void and be surrendered and canceled upon the filing of a suggestion by the Attorney General or other duly authorized law officer that the United States is interested in such cause, and assumes liability to satisfy any decree included within said bond or stipulation, and thereafter any such decree shall be paid as provided in section 8 of this Act.

3. The Lend-Lease Act of March 11, 1941, 55 Stat. 31 (22 U. S. C. (Supp. I) sections 411–422) provides in pertinent part as follows:

SEC. 3. (a) Notwithstanding the provisions of any other law, the President may, from time to time, when he deems it in the interest of national defense, authorize the Secretary of War, the Secretary of the Navy, or the head of any other department or agency of the Government—

(1) To manufacture in arsenals, factories, and shipyards under their jurisdiction, or otherwise procure, to the extent to which funds are made available therefor, or contracts are authorized from time to time by the Congress, or both, any defense article for the government of any country whose defense the President deems vital to the defense of the United States.

(2) To sell, transfer title to, exchange, lease, lend, or otherwise dispose of, to any such government any defense article, but no

defense article not manufactured or procured under paragraph (1) shall in any way be disposed of under this paragraph, except after consultation with the Chief of Staff of the Army or the Chief of Naval Operations of the Navy, or both. The value of defense articles disposed of in any way under authority of this paragraph, and procured from funds heretofore appropriated, shall not exceed $1,300,000,000. The value of such defense articles shall be determined by the head of the department or agency concerned or such other department, agency or officer as shall be designated in the manner provided in the rules and regulations issued hereunder. Defense articles procured from funds hereafter appropriated to any department or agency of the Government, other than from funds authorized to be appropriated under this Act, shall not be disposed of in any way under authority of this paragraph except to the extent hereafter authorized by the Congress in the Acts appropriating such funds or otherwise.

* * * * *

(b) The terms and conditions upon which any such foreign government receives any aid authorized under subsection (a) shall be those which the President deems satisfactory, and the benefit to the United States may be payment or repayment in kind or property, or any other direct or indirect benefit which the President deems satisfactory.

* * * * *

(d) Nothing in this Act shall be construed to authorize or to permit the authorization of convoying vessels by naval vessels of the United States.

(e) Nothing in this Act shall be construed to authorize or to permit the authorization of the entry of any American vessel into a combat area in violation of section 3 of the Neutrality Act of 1939.

SEC. 4. All contracts or agreements made for the disposition of any defense article or defense information pursuant to section 3 shall contain a clause by which the foreign government undertakes that it will not, without the consent of the President, transfer title to or possession of such defense article or defense information by gift, sale, or otherwise, or permit its use by anyone not an officer, employee, or agent of such foreign government.

U. S. GOVERNMENT PRINTING OFFICE: 1944

(30)

FILED
SEP 30 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 361

In the Matter of the Application of the

UNITED STATES OF AMERICA,
Respondent,

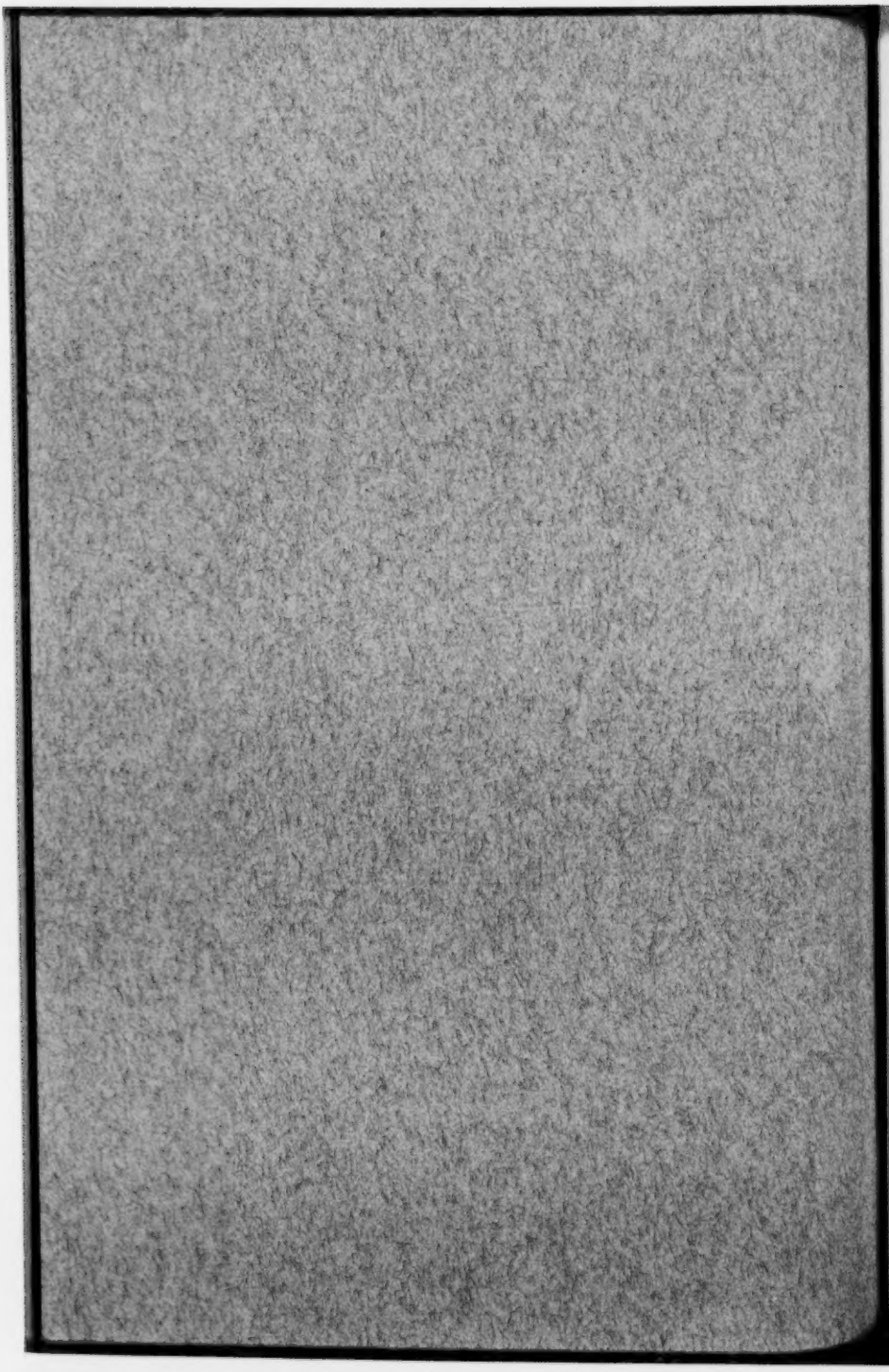
for a Writ of Prohibition and/or Mandamus

against

The HONORABLE FRANCIS G. CAFFEY, Judge of the District Court of the United States for the Southern District of New York, et al.,
Petitioners.

REPLY BRIEF IN SUPPORT OF PETITION

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
LEONARD J. MATTESON,
RICHARD F. SHAW,
Counsel for Petitioners.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 361

In the Matter of the Application of the
UNITED STATES OF AMERICA,
Respondent,
for a Writ of Prohibition and/or Mandamus
against
The HONORABLE FRANCIS G. CAFFEY, Judge of the District Court of the United States for the Southern District of New York, et al.,
Petitioners.

REPLY BRIEF IN SUPPORT OF PETITION

FIRST POINT

The question presented by this petition for certiorari is misstated in respondent's brief in opposition at page 2. The ownership of the *Archer* by the United States is not mentioned.

Petitioners do not claim that suit may be brought against the United States under the Public Vessels Act except in a case where, as here, the public vessel is owned by the United States. Counsel for respondent go so far as to say (Brief, page 11):

> "But there is nothing to show that legal title to the *Archer* was retained and not transferred to the British Government."

Quite the contrary is true. The libel alleges (R. 8):

> "At all the times hereinafter mentioned respondent was and now is a corporation sovereign and owner of the motor vessel formerly named *'Mormacland'* [*Archer*]."

Respondent's exceptive allegations allege that in May, 1941, the United States Maritime Commission "purchased the *Mormacland* and the United States thereupon became the owner thereof" (R. 11).

There is no allegation in the exceptive allegations or elsewhere that the United States ever parted with ownership. The allegation in the exceptive allegation is only that the United States parted with physical possession, viz.:

> "Thereupon, and on November 17, 1941, the said vessel was physically delivered by the Maritime Commission to their Lords Commissioners of the Admiralty * * *" (R. 12).

For the purposes of this proceeding the allegations of the libel must be accepted as true except as contradicted by the exceptive allegations, and the exceptive allegations must be accepted as true. The libellants in the admiralty suit alleged that the United States owned the *Archer*. The respondent alleged that it bought the *Archer* and has never alleged that it parted with ownership. Therefore, this petition must be determined upon the assumption that respondent owned the *Archer* at the time of the collision.

Below, respondent's counsel admitted (footnote to their brief at page 4) that the exceptive allegation that the American documentation of the *Archer* was cancelled when she was delivered to the British was in error. That footnote said in part:

> "The exceptive allegations state further that prior to delivery the American documentation of the vessel was cancelled. This statement was predicated upon information later found to have been in error. * * * "

Indeed, the Court below may have granted respondent's petition in part upon the erroneous assumption that respondent did not own the *Archer,* for it said:

> "Notwithstanding her American documentation and the fact that the question of her ultimate disposition, and indeed of her actual ownership, was left at large by the Lend-Lease Act * * *."

Perhaps later our Government and the British may agree that title shall be deemed to have passed to the British as of the date of her original delivery. Patently, however, ownership had not been transferred to the British when the *Brazos* was sunk, i.e., when the rights of the libellants in the admiralty suit accrued. For the purposes of this proceeding, ownership of the *Archer* by the United States cannot be gainsaid.

If at the trial of the admiralty suit the Government can prove that it did not own the *Archer,* the libel will, of course, be dismissed.

Respectfully submitted,

CHAUNCEY I. CLARK,
EUGENE UNDERWOOD,
LEONARD J. MATTESON,
RICHARD F. SHAW,
Counsel for Petitioners.

New York, N. Y.,
September 28, 1944.

(P-654)